



LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2013-6 CRB DD (MW) 2009-2011]

Distribution of 2009 through 2011 DART Musical Works Funds Royalties

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion for partial distribution.

SUMMARY: The Copyright Royalty Judges (Judges) are soliciting comments on a motion for partial distribution in connection with 2009, 2010, and 2011 DART Musical Works Fund royalties.

DATES: Comments are due on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: Interested parties may comment electronically by email to crb@loc.gov. In the alternative, parties shall send an original, five copies, and an electronic copy of their comments on a CD either by mail or in-person delivery. **PARTIES SHALL NOT USE MULTIPLE MEANS OF TRANSMISSION.** Parties may deliver their comments to the Copyright Royalty Board (CRB) by United States mail or by courier delivery. The CRB will NOT accept comments delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If using mail (including overnight delivery), parties must address their comments to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977. If using a private party for hand delivery, parties shall direct delivery of comments to the Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue, S.E., Washington, DC 20559-6000. If using a commercial courier, parties shall order delivery of comments to the Congressional Courier Acceptance Site, 2nd and D Streets, N.E., Washington, DC; addressing the

envelope to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue, S.E., Washington, DC 20559-6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION: On September 9, 2013, Broadcast Music, Inc., the American Society of Composers, Authors and Publishers, SESAC, Inc., and The Harry Fox Agency, Inc. (hereinafter “Settling Claimants”) filed with the Judges a Motion for Partial Distribution of the [Digital Audio Recording Technology (DART)] Musical Works Fund to Broadcast Music, Inc., American Society of Composers, Authors and Publishers, SESAC, Inc., and the Harry Fox Agency, Inc., as Settling Claimants (Motion). In the Motion, the Settling Claimants state that they have reached confidential settlements among themselves concerning their respective distribution shares for the years 2009 through 2011, inclusive. The Settling Claimants request that the Judges, pursuant to Section 801(b)(3)(C) of the Copyright Act, publish in the **Federal Register** notice of their motion and receive comments on the proposed distribution of 95% of the 2009-2011 DART Musical Works Funds (Writers and Music Publishers Subfunds).

Section 801(b)(3)(C) requires publication in the **Federal Register** of the request for partial distribution and a period for submission of responses to the motion. The Settling Claimants state that the Judges “have the discretion, within a zone of reasonableness, to find that 95% of the royalties are not in controversy.” Motion at 3. As support for this assertion, they state that “[i]n all DART Musical Works Funds distribution proceedings since 1997, non-settling individual writer and publisher claimants collectively have either received less than one tenth of one percent (0.1%) of the royalty funds or have been dismissed altogether.” The Settling

Claimants assert that, therefore, at least 95% of the 2009-2011 Musical Works Funds is clearly not in controversy, and a partial distribution of this amount to the Settling Parties is “appropriate and warranted at this time.” *Id.*

The Judges do not find, based on the historical record, that no controversy exists with regard to the 2009, 2010, or 2011 Musical Works funds; rather the Judges publish the Settling Parties’ request for comment in the **Federal Register**. After publication in the **Federal Register**, if the Judges determine that no claimant entitled to receive any of the 2009–2011 Musical Works funds has stated a reasonable objection to the partial distribution, then the Judges may order the requested partial distribution, provided that the Settling Claimants requesting the partial distribution, among other things, sign an agreement obligating them to return any excess amounts to the extent necessary to comply with a final determination on the distribution of the funds. *See* 17 U.S.C. 801(b)(3)(C). The Settling Claimants have accepted this obligation. *See* Motion at 3-4.

The Judges, therefore, seek comments from any claimant entitled to receive royalties from the 2009-2011 DART Musical Works Funds stating whether there are any reasonable objections to a partial distribution of 95% of the 2009-2011 Musical Works Funds to the Settling Claimants

The Settling Claimants’ motion for partial distribution is posted on the Copyright Royalty Board Web site at <http://www.loc.gov/crb> .

Dated: October 21, 2013

Suzanne M. Barnett
Chief Copyright Royalty Judge.

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